

**HOME CARE ACT****TITLE 63 OF THE OKLAHOMA STATUTES****Section 1-1960 et seq.**

"Unofficial Version"

**§63-1-1960. Short title.**

This act shall be known and may be cited as the "Home Care Act".

*Added by Laws 1992, c. 139, § 2, eff. Sept. 1, 1992.*

**§63-1-1961. Definitions.**

As used in the Home Care Act:

1. "Board" means the State Board of Health;
2. "Certification" means verification of appropriate training and competence established by the State Board of Health by rules promulgated pursuant to the Home Care Act for home health aides and home care agency administrators;
3. "Department" means the State Department of Health;
4. "Home care agency" means any sole proprietorship, partnership, association, corporation or other organization which administers, offers or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence. The term "home care agency" shall not include:
  - a. individuals who contract with the Department of Human Services to provide personal care services, provided such individuals shall not be exempt from certification as home health aides,
  - b. organizations that contract with the Oklahoma Health Care Authority as Intermediary Services Organizations (ISO) to provide federal Internal Revenue Service fiscal and supportive services to Consumer-Directed Personal Assistance Supports and Services (CD-PASS) waiver program participants who have employer responsibility for hiring, training, directing and managing an individual personal care attendant, or
  - c. CD-PASS waiver program employer participants;
5. "Home care services" means skilled or personal care services provided to clients in their place of residence for a fee;
6. "Home health aide" means an individual who provides personal care to clients in their temporary or permanent place of residence for a fee;
7. "Home care agency administrator" means a person who operates, manages, or supervises, or is in charge of a home care agency;

8. "Personal care" means assistance with dressing, bathing, ambulation, exercise or other personal needs;

9. "Skilled care" means home care services performed on a regular basis by a trained Respiratory Therapist/Technician or by a person currently licensed by this state, including but not limited to a Licensed Practical Nurse, Registered Nurse, Physical Therapist, Occupational Therapist, Speech Therapist, or Social Worker.

10. "Standby assistance" means supervision of client directed activities with verbal prompting and infrequent, incidental hands-on intervention only; and

11. "Supportive home assistant" means an individual employed by a home care agency who provides standby assistance to ambulatory clients, in conjunction with other companionship or homemaker services, in the temporary or permanent place of residence of the client for a fee.

*Added by Laws 1992, c. 139, § 3, eff. Sept. 1, 1992. Amended by Laws 1995, c. 169, § 1, emerg. eff. May 4, 1995; Laws 1996, c. 349, § 1, eff. Nov. 1, 1996; Laws 2004, c. 249, § 1, eff. November 1, 2004; Amended by Laws 2009, HB 1736, c. 370, § 1, eff. November 1, 2009.*

**§63-1-1962. Licenses required - Exemptions.**

A. No home care agency as such term is defined by this act shall operate without first obtaining a license as required by the Home Care Act.

B. 1. No home care agency, except as otherwise provided by this subsection, shall place an individual in the role of supportive home assistant with a client on a full-time, temporary, per diem, or other basis, unless the individual has completed agency-based supportive home assistant training taught by a registered nurse in the sections applicable to the assistance required by the client. Each supportive home assistant who successfully completes agency-based training shall demonstrate competence by testing through an independent entity approved by the State Department of Health. The requirements related to application, approval, renewal, and denial of such testing entities shall be set forth in administrative rules promulgated by the State Board of Health.

2. The home care agency shall develop a written training plan that shall include, at a minimum, the following:

- a. observation, reporting, and documentation of client status and the standby assistance or other services furnished,
- b. maintenance of a clean, safe, and healthy environment,
- c. recognizing an emergency and necessary emergency procedures,

- d. safe techniques to provide standby assistance with bathing, grooming, and toileting,
- e. assistance with meal preparation and safe food handling and storage,
- f. client rights and responsibilities and the need for respect for the client and for the privacy and property of the client, and
- g. basic infection control practices to include, at a minimum, instruction in acceptable hand hygiene techniques and the application of standard precautions.

3. Supervisory visits shall be made according to the client need, as determined by the nursing supervisor, but no less than once every six (6) months.

4. No supportive home assistant shall provide services to a client until a criminal history background check and a check of the nurse aide registry maintained by the State Department of Health is performed in accordance with Section 1-1950.1 of this title and the assistant is found to have no notations of abuse of any kind on the registry and no convictions of the crimes listed in subsection F of Section 1-1950.1 of this title.

5. No home care agency may employ a supportive home assistant listed on the Department of Human Services Community Services Worker Registry.

C. 1. No employer or contractor, except as otherwise provided by this subsection, shall employ or contract with any individual as a home health aide for more than four (4) months, on a full-time, temporary, per diem or other basis, unless such individual is a licensed health professional or unless such individual has satisfied the requirements for certification and placement on the home health aide registry maintained by the State Department of Health; and

2. a. Any person in the employment of a home care agency as a home health aide on June 30, 1992, with continuous employment through June 30, 1993, shall be granted home health aide certification by the Department on July 1, 1993. The home care agency shall maintain responsibility for assurance of specific competencies of the home health aide and shall only assign the home health aide to tasks for which the aide has been determined to be competent.

- b. Any home health aide employed between the dates of July 1, 1992, and June 30, 1993, shall be eligible for certification by passing a competency evaluation and testing as required by the Department.
- c. Any home health aide employed on and after July 1, 1996, shall complete any specified training,

competency evaluation and testing required by the Department.

D. The provisions of the Home Care Act shall not apply to:

1. A person acting alone who provides services in the home of a relative, neighbor or friend;
2. A person who provides maid services only;
3. A nurse service or home aide service conducted by and for the adherents to any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing;
4. A person providing hospice services pursuant to the Oklahoma Hospice Licensing Act;
5. A nurse-midwife;
6. An individual, agency, or organization that contracts with the Oklahoma Health Care Authority to provide services under the Home and Community-Based Waiver for persons with mental retardation or that contracts with the Department of Human Services to provide community services to persons with mental retardation; provided, that staff members and individuals providing such services shall receive a level of training, approved by the Department of Human Services, which meets or exceeds the level required pursuant to the Home Care Act. An individual, agency or organization otherwise covered under the Home Care Act shall be exempt from the act only for those paraprofessional direct care services provided under contracts referenced in this paragraph;
7. An individual, agency or organization that provides or supports the provision of personal care services to an individual who performs individual employer responsibilities of hiring, training, directing and managing a personal care attendant as part of the Oklahoma Health Care Authority Consumer-Directed Personal Assistance Supports and Services (CD-PASS) waiver program. An individual, agency or organization otherwise covered under the provisions of the Home Care Act shall be exempt from the act only for those paraprofessional direct care services provided under Oklahoma Health Care Authority contracts referenced in this paragraph, but shall not be exempt from the criminal history background check required under the Home Care Act and Section 1-1950.1 of this title for other paraprofessional direct care service providers. A personal care attendant hired by a consumer under the CD-PASS program shall be exempt from certification as a home health aide, provided such personal care attendant receives the training required and approved by the Department of Human Services;

8. An individual who only provides Medicaid home- and community-based personal care services pursuant to a contract with the Oklahoma Health Care Authority; or
9. An individual who:
  - a. is employed by a licensed home care agency exclusively to provide personal care services on a live-in basis,
  - b. has no convictions pursuant to a criminal history investigation as provided in Section 1-1950.1 of this title,
  - c. is being continuously trained by a registered nurse to provide care that is specific to the needs of the particular client receiving the care, and
  - d. is supervised by a registered nurse via an on-site visit at least once each month.

*Added by Laws 1992, HB2008, c. 139, § 4, eff. September 1, 1992; Amended by Laws 1996, SB 1314, c. 157, § 1, emerg. eff. July 1, 1996; Amended by Laws 1997, SB 663, c. 219, § 1, emerg. eff. May 19, 1997; Amended by Laws 1997, HB 1790, c. 407, § 20, eff. November 1, 1997; Amended by Laws 1998, HB 3348, c. 5, § 19, emerg. eff. March 4, 1998; Amended by Laws 2004, SB 1109, c. 249, § 2, eff. November 1, 2004; Amended by Laws 2009, HB 1736, c. 370, § 2, eff. November 1, 2009.*

**§63-1-1962a. Certification of Home Care Agency Administrators.**

A. 1. The State Board of Health shall have authority to determine the qualifications, skill and fitness of any person employed to serve as an administrator of a home care agency. The State Board of Health in promulgating rules pursuant to this section may consider advice and comments from representatives of home care agencies, home care agency administrators and representatives of statewide organizations for home care agency clients.

2. The State Board of Health shall develop standards which must be met by individuals in order to receive certification as a home health agency administrator, which standards shall be designed to ensure that home health agency administrators will be individuals who are of good character and are suitable, and who, by training or experience, are qualified to serve as home health agency administrators.

B. The State Department of Health, pursuant to rules promulgated by the Board, shall:

1. Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards as established in paragraph 2 of subsection A of this section;

2. Certify individuals determined, after the application of such techniques, to meet such standards, and revoke or

suspend certification previously issued by the Department in any case where the individual holding any such certification is determined substantially to have failed to conform to the requirements of such standards;

3. Establish and carry out procedures designed to ensure that individuals certified as home health agency administrators will, during any period that they serve as such, comply with the requirements of such standards; and

4. Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the Department to the effect that any individual certified as a home care agency administrator has failed to comply with the requirements of such standards.

C. 1. In order to further ensure minimum standards for certification, the Board shall require a home care agency administrator to receive education or training which shall include, but not be limited to, training in administration, supervision, fiscal management, ethics, community relations, public information and human relations, concerning the issues associated with the operation of home care agencies and programs. Any person employed as an administrator after November 1, 1996, shall have completed the education or training specified by this subsection.

2. On and after August 1, 1997, proof of successful completion of the education, training or continuing education, as applicable, for the home care agency administrator shall be required prior to issuance or renewal of a license for a home care agency pursuant to the provisions of the Home Care Act.

D. It shall be unlawful and a misdemeanor for any person to act or serve in the capacity as a home care agency administrator unless such individual is the holder of a certification as a home care agency administrator, issued in accordance with the provisions of the Home Care Act.

E. Each person certified as a home care agency administrator pursuant to the provisions of this section shall be required to pay an annual certification fee in an amount to be determined by the State Board of Health not to exceed Two Hundred Dollars (\$200.00). Each such certificate shall expire on the 31st day of July following its issuance and shall be renewable for twelve (12) months beginning August 1, upon payment of the annual certification fee.

F. In addition to the annual certification fees, the State Board of Health may impose fees for training or education programs conducted or approved by the Board.

G. All revenues collected as a result of fees authorized in this section and imposed by the Board shall be deposited into the Public Health Special Fund.

*Added by Laws 1996, HB 2648, c. 349, § 4, eff. November 1, 1996.*

**§63-1-1963. State Department of Health - Powers and duties - Rules and regulations for investigation and hearing of complaints.**

A. The State Department of Health shall have the power and duty to:

1. Issue, renew, deny, modify, suspend and revoke licenses and deny renewal of licenses for agencies, and issue, renew, deny, modify, suspend and revoke certificates and deny renewal of certificates for home health aides pursuant to the provisions of the Home Care Act;

2. Establish and enforce qualifications, standards and requirements for licensure of home care agencies and certification of home health aides;

3. Issue or renew a license to establish or operate a home care agency if the Department determines that the agency meets the requirements of or is accredited or certified by one of the following accrediting or certifying organizations or programs. In addition, the accredited home care agency through this paragraph will not be subject to an inspection or examination by the Department unless necessary to investigate complaints under subsection B of this section:

a. Title XVIII or XIX of the federal Social Security Act,

b. the Joint Commission on Accreditation of Healthcare Organizations/Home Care Accreditation Services (JCAHO), or

c. the Community Health Accreditation Program of the National League for Nursing (CHAP);

4. Establish and maintain a registry of certified home health aides;

5. Enter any home care agency when reasonably necessary for the sole purpose of inspecting and investigating conditions of the agency for compliance with the provisions of the Home Care Act, or compliance with the standards and requirements for licensure or certification developed by the Department pursuant to the provisions of the Home Care Act;

6. Establish administrative penalties for violations of the provisions of the Home Care Act; and

7. Exercise all incidental powers as necessary and proper for the administration of the Home Care Act.

B. 1. The State Board of Health shall promulgate rules necessary for the investigation and hearing of complaints regarding a home care agency or home health aide.

2. The Department shall establish procedures for receipt and investigation of complaints regarding a home care agency or home health aide.

3. A complaint regarding a home care agency or home health aide shall not be made public unless a completed investigation substantiates the violations alleged in the complaint.

*Added by Laws 1992, c. 139, § 5, eff. September 1, 1992.*

**§63-1-1964. Contents, coverage and scope of rules.**

The State Board of Health shall promulgate rules necessary to implement the provisions of the Home Care Act. Such rules shall include, but shall not be limited to:

1. Minimum standards for home care services. In establishing such standards, the Board shall consider those standards adopted by state and national home care associations;

2. Requirements for the certification and renewal certification of home health aides and home care agency administrators;

3. Provisions for transfer of ownership of a licensed agency;

4. A requirement that each licensed agency create and disclose to its clients a statement of clients' rights and responsibilities;

5. Establishing continuing education requirements for renewal of certifications for home care agency administrators;

6. Requirements for financial resources to ensure a home care agency's ability to provide adequate home care services;

7. Standards for assessing an applicant's business and professional experience as demonstrated in prior health care provider operations including, but not limited to, nursing homes, residential care homes, and home care and in previous compliance with all lawful orders of suspension, receivership, administrative penalty or sanction issued by the State Department of Health or by other administrative agencies in other states with similar responsibilities;

8. Restrictions on any agency, agency employee, or agency contractor providing skilled care or conducting an in-home assessment of the need for skilled care unless and until the agency receives a physician's order to provide skilled care or to conduct an in-home assessment of the need for skilled care; provided, however, such restrictions shall not prevent an agency from providing personal care to a client without a physician's order. Provided further, such restrictions shall not apply to in-home assessments of home and community-based waiver clients in the state Medicaid program;

9. Restrictions on any agency, agency employee, or agency contractor soliciting, coercing, or harassing a consumer of home care services or who may need home care services; and

10. Standards or other provisions which do not conflict with any federal requirements relating to the federal Medicaid and Medicare programs.

*Added by Laws 1992, c. 139, § 6, eff. September 1, 1992; Amended by Laws 1996, c. 349, § 2, eff. November 1, 1996; Amended by Laws 1997, c. 238, § 7, eff. November 1, 1997; Amended by Laws 2004, SB 1109, c. 249, § 3, eff. November 1, 2004.*

**§63-1-1965. Procedures for licensure.**

A. Every person, corporation, partnership, association or other legal entity desiring to obtain a license to establish, or to obtain a renewal license to operate, a home care agency in this state shall make application to the State Department of Health in such form and accompanied by such information as the State Commissioner of Health shall prescribe. Such information shall include, but not be limited to:

1. The name and location of the home care agency for which a license is sought; and

2. The name and address of the person or persons under whose ownership, operation, management, or supervision the home care agency will be conducted.

B. 1. An application for an initial license to establish or operate a new home care agency shall be accompanied by a nonrefundable application fee of up to Three Thousand Dollars (\$3,000.00) not to exceed the reasonable costs incurred by the Department in implementing the Home Care Act.

2. An application for a license, or renewal thereof, to operate an existing home care agency shall be accompanied by a nonrefundable licensing fee of Five Hundred Dollars (\$500.00).

3. An application for license, or renewal thereof, to establish or operate a home care agency branch office of an agency licensed in the State of Oklahoma shall be accompanied by a nonrefundable licensing fee of Twenty-five Dollars (\$25.00).

4. Funds collected pursuant to this section shall be deposited in the Home Health Care Revolving Fund.

C. Disclosure statements shall be completed by the applicant and all affiliated persons and such other legal entities specified by this subsection. The disclosure statements shall be made a part of the application and shall include, but not be limited to, the following information:

1. The full name and address of the applicant, and all affiliated persons;

2. The full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or which is a parent company or subsidiary of the applicant;

3. A description of any ongoing organizational relationships as they may impact operations within the state; and

4. The names, locations, and dates of ownership, operation, or management for all current and prior home care agencies owned, operated or managed in this state or in any other state by the applicant or by any affiliated persons.

D. An application for a license for a home care agency may be denied by the Commissioner for any of the following reasons:

1. Failure to meet any of the minimum standards of the Home Care Act or rules of the Board promulgated pursuant thereto; or

2. Conviction of the applicant, or any affiliated persons, for any offense listed in subsection F of Section 1-1950.1 of this title.

E. The license issued by the Commissioner shall:

1. Not be transferable or assignable except to any affiliated person, parent company or subsidiary of the applicant or legal entity which has an ongoing organizational relationship with the applicant;

2. Be posted in a conspicuous place, open to the public, on the licensed premises;

3. Be issued only for the premises named in the application; and

4. Except as otherwise provided by this paragraph, expire on July 31 of each year. The Department shall promulgate rules which will authorize or allow:

a. the term of a renewal license issued pursuant to the Home Care Act prior to the effective date of this act which will expire prior to July 1, 1997, to be extended or any application fee or other fee required by the Home Care Act to be prorated so that a renewal license may be issued on August 1, 1997, and

b. the issuance of a new license, or a renewal license, prior to or after the effective date of this act to establish or operate a home care agency pursuant to the Home Care Act for less than one (1) year or the proration of any application fee or other fee so required so that a renewal license may be issued on August 1, 1997.

F. After issuing a license, the Commissioner may revoke or suspend the license based on any of the following grounds:

1. Violation of any of the provisions of the Home Care Act or the rules or standards promulgated by the Board; or

2. Permitting, aiding, or abetting the commission of any illegal act by a licensed home care agency.

G. The issuance or renewal of a license after notice of a violation shall not constitute a waiver by the Department of its power to rely on the violation as the basis for subsequent revocation of a license or other enforcement action authorized by the Home Care Act.

H. For purposes of this section:

1. "Affiliated person" means:

- a. any officer, director or partner of the applicant,
- b. any person employed by the applicant as a general or key manager who directs the operations of the facility which is the subject of the application, and
- c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity; and

2. "Subsidiary" means any person, firm, corporation or other legal entity which:

- a. controls or is controlled by the applicant,
- b. is controlled by an entity that also controls the applicant, or
- c. the applicant or an entity controlling the applicant has directly or indirectly the power to control.

*Added by Laws 1992, c. 139, § 7, eff. September 1, 1992; Amended by Laws 1994, c. 283, § 18, eff. September 1, 1994; Amended by Laws 1994, c. 382, § 30, eff. September 1, 1994; Amended by Laws 1996, c. 349, § 3, eff. November 1, 1996.*

#### **§63-1-1966. Violations - Penalties.**

Any home care agency, home care agency administrator, or home health aide covered by the Home Care Act that has been determined by the State Department of Health to have violated any provision of the Home Care Act or any rule promulgated thereto may be liable for an administrative penalty of not more than One Hundred Dollars (\$100.00) per violation for each day on which a violation occurs or continues. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations. Funds collected pursuant to this section shall be deposited in the Home Health Care Revolving Fund created in Section 1-1971 of this title.

*Added by Laws 1992, c. 139, § 8, eff. September 1, 1992; Amended by Laws 1994, c. 283, § 20, eff. September 1, 1994; Amended by Laws 1994, c. 382, § 31, eff. September 1, 1994; Amended by Laws 1997, c. 219, § 2, eff. May 19, 1997.*

#### **§63-1-1967. Violations - Equitable relief - Jurisdiction.**

The State Department of Health may bring an action in a court of competent jurisdiction for equitable relief to redress or restrain a violation by any person of a provision of the Home

Care Act or any rule promulgated pursuant to the provisions of the Home Care Act. Said court shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief or interim equitable relief.

*Added by Laws 1992, c. 139, § 9, eff. September 1, 1992.*

**§63-1-1967a. Civil actions.**

A. Any person, other legal entity, or any governmental agency may bring a civil action to restrain a provider of home care services, or a person acting on behalf of the provider or under the provider's control from, or for the collection of damages caused by:

1. Making or enforcing unconscionable terms or provisions of a provider agreement;

2. Fraudulent or unconscionable conduct in inducing a patient to enter into an agreement; or

3. Fraudulent or unconscionable conduct in collecting fees for services.

B. In an action brought pursuant to this section, the court may grant relief if it finds:

1. That the defendant has made unconscionable agreements or has engaged in or is likely to engage in a course of fraudulent or unconscionable conduct;

2. That the agreements or conduct of the defendant has caused or is likely to cause injury to a patient; or

3. That the defendant has been able to cause or will be able to cause injury primarily because of the nature of the services involved.

C. In applying this section, consideration shall be given to each of the following factors:

1. Belief by the defendant at the time the services were provided that there was no reasonable probability of injury;

2. Knowledge by the defendant at the time the services were provided of the inability of the patient to receive substantial benefit from the services provided;

3. Gross disparity between the price of the services provided measured by the price at which similar services are readily available or obtainable by like patients;

4. The fact that the defendant contracted for or received separate or additional charges for services with the effect of making the cost for the services provided, considered as a whole, unconscionable;

5. The fact that the defendant has knowingly taken advantage of the inability of the patient reasonably to protect the patient's interests by reason of physical or mental

infirmities, ignorance, illiteracy, or inability to understand the language of the agreements or similar factors; and

6. Any other fact.

D. In an action brought pursuant to this section, conduct, a charge, or a practice expressly specified in this section shall not in itself be deemed unconscionable.

E. With respect to an action brought to restrain actions pursuant to the provisions of the Home Care Act, or unconscionable agreements or fraudulent or unconscionable conduct, a person may apply to the court for temporary relief against a defendant, pending final determination. If the court finds after a hearing held upon notice to the defendant that there is reasonable cause to believe that the defendant should be restrained, it may grant any temporary relief or restraining order it deems appropriate.

F. In addition, after demand, a person, other legal entity or governmental agency may bring a civil action against a provider of home care services, or a person acting on behalf of the provider or under the provider's control, to recover damages incurred as a result of any action taken by the provider or such person, subject to the provisions of this section.

G. The provisions of this section shall not affect any other remedies available under other principles of law or equity.

*Added by Laws 1996, c. 349, § 5, eff. November 1, 1996.*

**§63-1-1968. Eligibility to serve as guardian.**

No agency, employee of any agency, or home health aide shall serve as the guardian of a client unless such home care provider is related to the client by blood or marriage and is otherwise eligible to serve as a guardian.

*Added by Laws 1992, c. 139, § 10, eff. September 1, 1992.*

**§63-1-1969. Administrative Procedures Act - Application.**

The provisions of the Administrative Procedures Act shall apply to all administrative rules and procedures of the State Board of Health promulgated pursuant to the Home Care Act.

*Added by Laws 1992, c. 139, § 11, eff. September 1, 1992.*

**§63-1-1970. Home Health Advisory Board.**

A. There is hereby created a Home Health Advisory Board which shall be composed of seven (7) members as follows:

1. One member who shall be a family practice physician or general practitioner of the medical professions licensed pursuant to the laws of this state and with a practice which includes home health service;

2. One member who shall be a registered nurse licensed pursuant to the laws of this state and whose practice includes home health services;

3. Two members who shall be administrators of home health agencies which shall, subsequent to the effective date of this act and its regulation, be licensed pursuant to this act; and

4. Three members who shall represent the general public and who shall, within twenty-four (24) months of their appointment, be consumers of home health services for themselves or for family members within the third degree of consanguinity.

B. The members of the Home Health Advisory Board shall be appointed by the State Commissioner of Health with the advice and consent of the State Board of Health from a list of names submitted to the Commissioner by any statewide organization comprised exclusively of home care agencies. The lists submitted to the Commissioner shall contain a number of names equal to twice the number of positions to be appointed for each required membership category on the Home Health Advisory Board. Each member shall be appointed for a term of three (3) years except that the initial appointment of the physician and one administrator shall be for one (1) year and the initial appointment of one administrator and one consumer shall be for two (2) years. Vacancies shall be filled in like manner.

C. The State Department of Health shall provide staff to perform the designated duties of the Home Health Advisory Board. The Department shall provide meeting space for the Advisory Board.

D. The Advisory Board shall annually elect from among its membership a chair. The Home Health Advisory Board shall meet at least quarterly and at such other times as necessary. The members shall serve without compensation but shall be reimbursed for expenses related to their service by the Department pursuant to the provisions of the State Travel Reimbursement Act.

E. The Home Health Advisory Board shall have the power and duty to:

1. Serve as an advisory body to the Department for the development and improvement of services to patients of home health agencies;

2. Review and make recommendations to the State Board of Health regarding rules and standards promulgated by the Board;

3. Approve, in its advisory capacity, rules and standards promulgated by the Board; and

4. Evaluate and review the standards, practices and procedures of the Department regarding the administration and enforcement of the provisions of the Home Care Act.

*Added by Laws 1992, c. 139, § 12, eff. September 1, 1992;  
Amended by Laws 1999, c. 93, § 9, eff. November 1, 1999.*

**§63-1-1971. Home Health Care Revolving Fund.**

There is hereby created in the State Treasury a revolving fund for the State Department of Health, to be designated as the "Home Health Care Revolving Fund". Said fund shall be a continuing fund not subject to fiscal year limitations. The fund shall consist of all monies collected pursuant to the provisions of Section 1-1965 and Section 1-1966 of Title 63 of the Oklahoma Statutes. All monies accruing to said fund are hereby appropriated and shall be budgeted and expended by the State Department of Health for licensure and regulation of home care agencies and branch offices. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

*Added by Laws 1994, c. 283, § 19, eff. September 1, 1994.*

**§63-1-1972. Regulation of Agencies Providing Companion and Sitter Services - Investigations - Penalties**

1. "Companion" or "sitter" means assistance with household tasks, shopping, meal preparation or planning, and provision of fellowship and other nonpersonal care for the individual including transportation, letter writing, socialization, and is intended to enable the individual to remain safely and comfortably in their place of residence in exchange for consideration; and

2. "Agency" means any partnership, firm, corporation, association, limited liability company, and any other legal entity authorized to do business in Oklahoma.

B. The State Board of Health, with the advice and consent of the Home Health Advisory Board, is authorized to promulgate rules in accordance with the Home Care Act to cover agencies providing companion and sitter services that at a minimum require:

1. An individual to be designated by the legal entity to provide supervision of the companion or sitter services;
2. Criminal background checks;
3. Workers' compensation coverage;
4. A nonrefundable application fee of One Thousand Dollars (\$1,000.00) for an initial license;
5. A nonrefundable renewal application fee of Five Hundred (\$500.00);
6. Liability insurance in amounts determined by the Department; and
7. A system of record keeping that shall include:
  - a. the name, address, and services provided for all clients,

- b. duties performed for each day of service,
- c. criminal background checks of companions or sitters which shall meet the criteria established for certified nurse aides as provided for in Section 1-1950.1 of this title, and
- d. any other related information.

C. The State Department of Health shall investigate complaints of noncompliance with the requirements provided in subsection B of this section concerning agencies that provide companion or sitter services in this state. Any agency, employer, employee, or designated agent thereof that provides, offers, or advertises companion or sitter services shall become licensed with the State Department of Health pursuant to the Home Care Act.

D. Any agency that:

- 1. Is represented by the title "home care agency", without having first complied with the provisions of the Home Care Act;
- 2. Otherwise offers to perform personal care or home care services, as defined in Section 1-1961 of this title;
- 3. Uses any other name, style, or description denoting that the agency is licensed to provide personal care or home care services; or
- 4. Is in violation of subsection C of this section, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each offense, by imprisonment for a term not to exceed six (6) months in the county jail, or by both fine and imprisonment.

E. It shall be unlawful for any agency not licensed in accordance with the Home Care Act to advertise or otherwise offer personal care, companion or sitter services, home care services, to use the title "home care agency", "home health agency", or "senior care agency", or to provide personal care, companion or sitter services, or home care services. Such action shall be subject to equitable relief in accordance with Section 1-1967 of this title.

F. The provisions of this section shall not apply to those persons exempted under subsection C of Section 1-1962 of this title and any individual not employed by an agency.

G. The State Board of Health shall promulgate rules necessary for the investigation and hearing of complaints regarding a companion or sitter service. The rules shall include provisions for a review process to be presided over by a mediator or arbitrator, acceptable to all parties, and who is not an employee of the State Department of Health.

H. An entity that holds a valid license as a home care agency under the Home Care Act and meets the requirements of

this section may provide companion or sitter services in addition to home care services under an existing license.  
*Added by Laws 2007, HB 1580, c. 255, § 1, eff. November 1, 2007; Amended by Laws 2008, HB 2641, c. 21, § 1, emerg. eff. April 18, 2008.*

**§63-1-1980. Use of Proceeds from Fees**

The owner of any nursing home, assisted living center, residential care home, continuum of care facility, independent living facility, life care community, long-term care facility or any other facility offering similar services which may or may not be subject to the licensing requirements of the State Department of Health shall be authorized to use the proceeds from any fees required by and paid to the facility unless named and specifically prohibited by the Long-Term Care Insurance Act for business expenses, including the payment of principal, interest or costs of borrowing related to debt incurred for purposes of capital asset acquisition or the improvement or expansion of the facility.

*Added by Laws 2008, SB 1420, c. 305, § 9, emerg. eff. June 2, 2008.*